

9:30	Call to Order	
9:35	Announcements	Justice Feldman
	♦ Introduce Judge Dawson ♦ Introduce David Abney ♦ Introduce Mike Baumstark ♦ Status of Judge Meehan	
	Approval of the Minutes of the March Meeting	
9:40	Capital Case Representation	Michael Kimerer
	♦ Bruce Feder, President of the Arizona Attorneys for Criminal Justice and Marc Budoff Vice President will be in attendance.	
10:10	Bill of Rights Film Festival	Justice Feldman
	♦ The Council will formally thank Dr. Starr for his work on the film festival and be requested to sponsor a permanent committee to establish festivals throughout the state.	
10:20	Criminal Code	
	- Implementation of Criminal Code	Bob Levy
	- Sentencing and Parity Review Committee - Council to recommend nominee for Committee to the Chief Justice	Dave Byers
10:40	Community Corrections Conference Report	Jones Osborn



10:50 ABA Crisis in the Justice System Conference Report Michael Kimerer

11:05 BREAK

11:15 Committee on Limited Jurisdiction Courts Judge Sam Daniels

11:25 Committee on Superior Court Judge Michael Brown

♦ Consideration of the formation of a Committee to study
Statewide Probate and Mental Health Issues has been requested.

**11:35 Commission on Juvenile Justice in Arizona Chief Justice Feldman
Dave Byers**

- ♦ Creation of the Commission
- ♦ Purpose of the Commission
- ♦ Commission Report Due to Council December 6, 1993
- ♦ Luncheon

11:50 Proposition 109 Implementation Brian deVallance

Call to the Public

**11:55 Adjourn to the Hopi Room for luncheon meeting with the
Commission on Juvenile Justice in Arizona and the
Committee on Juvenile Court Judges.**



ARIZONA JUDICIAL COUNCIL

Westcourt at the Buttes

June 22, 1993

Minutes

Council Members Present:

Judge Michael Brown
Judge Sam Daniels
Chief Justice Stanley Feldman
Michael Kimerer
Judge Roberto Montiel
Judge C. Kimball Rose

David Byers
Judge Edward Dawson
Chief Judge Noel Fidel
Chief Judge Joseph Livermore
Senator Jones Osborn
Judge Margaret Trujillo

Guests Present:

Judge Thomas Kleinschmidt
Marc Budoff

Vice Chief Justice James Moeller
Bruce Feder

Staff Present:

David Abney
Mike Baumstark
Agnes Felton

Carol Adams
Brian deVallance
Bob Wininger

Call to Order and Announcements

Chief Justice Stanley Feldman called the meeting to order at 9:30 a.m.

Judge Fidel introduced Judge Thomas Kleinschmidt who will become the Chief Judge of Division I of the Court of Appeals in July and will become a council member.

Justice Feldman introduced Vice Chief Justice James Moeller; Mike Baumstark, the new deputy administrative director of the Administrative Office of the Courts; Judge Edward Dawson, a new judicial council member; and David Abney, who will become Justice Feldman's administrative assistant this summer.

Judge Brown updated the council on Judge Meehan's medical situation.

Minutes of the March 24, 1993 Meeting

MOTION: To approve the minutes as submitted. The motion was seconded and carried. **AJC-93-26.**

Community Corrections Conference Report

Senator Osborn reported on the symposium "Saving Dollars and Saving Lives" sponsored by the American Probation and Parole Association and the Council of State Governments. The Arizona delegation consisted of seven state representatives, three state senators, three presiding judges, four probation officers, and others.

The Florida Department of Corrections developed a statewide, community-based, residential, non-secure drug treatment program for non-violent offenders. This is a six month residential program. The first two months consist of intensive substance abuse treatment at the facility 24 hours a day, followed by four months of employment training and re-entry training outside the facility during the day. Participants return to the facility at night for more drug treatment. FDOC contracts with community based agencies for these services.

Georgia has developed a continuum of criminal sentencing options. One option is diversion centers. As a condition of probation, the judge may send an offender to a diversion center. The inmate lives at the center, works at a job in the community, performs community service, and may participate in education and counseling programs. Living expenses, fines and restitution, and family support are deducted from the inmate's pay.

The second option is a community based, residential detention center for non-violent offenders. Offenders perform non-paid community work. The annual cost of this program is \$4,148.00 versus Arizona's prison cost of \$20,000. In Georgia, prison is the last resort for clearly dangerous, violent offenders who cannot be housed safely anywhere else, or for offenders who have not been successful in the other programs.

Early intervention has been determined to be an important element in curbing juvenile crime.

Capital Case Representation

The capital case representation committee, chaired by Mike Kimerer, met a number of times. A number of other issues have now been raised relating to indigent representation. Mr. Kimerer feels that the issue is being addressed in segments and requests that the council facilitate unification of the process.

Problems for attorneys representing capital cases are: (1) representation in these cases has become specialized, (2) there is a shortage of funding for salaries and expert witnesses, and (3) the amount of time involved. In lieu of the current system, the committee generally agrees that death penalty representation should be handled by an independent, oversight panel supervised by the Supreme Court.

The committee favors a system currently utilized in Georgia consisting of three attorneys assigned death penalty cases full time, two mitigation specialists, and three or four investigators. When a case is assigned to them, it is taken over by a private attorney, experienced in death penalty cases, who is teamed up with a less-experienced attorney, who assist the back up group, sitting as a second chair or assist with determination of issues.

Mr. Kimerer feels it is important for the AJC to review the entire indigent defense system. He is concerned that emphasis on the speed with which cases are adjudicated and emphasis on cost savings result in a large toll on the individuals involved in the process.

Representatives of criminal defense attorneys from across the state met to discuss capital and indigent representation. Bruce Feder, President of the Arizona Attorneys for Criminal Justice, and Marc Budoff, Vice President, reported on the results of the meeting. Issues of concern are:

- ◆ no statewide standards for indigency;
- ◆ no caseload standards;
- ◆ quality of representation;
- ◆ lack of coordination of training for criminal defense attorneys;
- ◆ no identification/coordination of resources;
- ◆ indigent defense in appellate, capital and general cases;
- ◆ lack of independence of public defender from funding sources;
- ◆ defenders do not have funding equal to that of prosecutors.

They request that consideration be given to forming a statewide oversight group for appellate, capital and general indigent defense. This group could help obtain funding and determine training needs. AACJ also would assist on these issues.

Judge Rose suggests that public defenders fully advise judges of the reasons they are not prepared for trial, not just state that they are not ready without any explanation. Justice Feldman states that involvement by the trial judge is often a very important element in assuring quality defense representation.

Judge Montiel, who also attended the symposium in Tampa, feels it is necessary to deal with the underlying problem of drug and alcohol abuse as nothing is being done about the actual abuse.

The federal public defender's office was cited as an example of a good caseload

management system. Judge Kleinschmidt indicates that a caseload over 50 probably prohibits adequate representation. The federal public defenders do not take new cases when they determine they are at their maximum caseload.

Mr. Kimerer suggests that the Arizona Judicial Council serve as an organizing body to review these problems and determine an action plan for suggested solutions. Justice Feldman asked what should be done to address the cases in the system and would consider proposals for a statewide board to supervise indigent defense.

MOTION: That the Council pursue this issue further and entertain proposals for a method of administering and handling indigent defense in the state. The motion was seconded and approved. **AJC-93-27.**

Input from prosecutors and non-metropolitan counties should be included in the proposal.

Bill of Rights Film Festival

This program has been held with the assistance of the Arizona Attorneys for Criminal Justice. The Arizona Judicial Council was a co-sponsor last year. A series of films emphasizing the provisions of the Constitution and the Bill of Rights have been donated and shown to the public without charge. A panel discussion follows the film. Funding for the program is becoming a problem. Judge Brown recommends contacting the media for financial assistance. AACJ might be able to provide a small amount of assistance. Consideration might be given to expanding the program into schools.

MOTION: A motion was made, seconded and approved that the council go forward with the program if possible. **AJC-93-28.**

Criminal Code

Bob Levy, director of the Adult Services Division of the AOC, reported on the activities of the criminal code training program committee, chaired by Judge Ron Reinstein. The training will update the participants on the revisions to the criminal code. A statewide teleconference is scheduled for November 3. The committee recommends that the bench blotter information should be provided in a different format. Any suggestions should be directed to Judge Reinstein.

A provision of the criminal code requires that the Chief Justice appoint three members to serve on the Sentencing and Parity Review Committee. One member is to be an attorney suggested by the Arizona Attorneys for Criminal Justice. Mr. Kimerer agreed to follow up on the appointment. Another member is to be a superior court judge from a

list submitted by the Arizona Judicial Council.

MOTION: The names of Judge Paul Colarich, Judge Ronald Reinstein, and Judge C. Kimball Rose are submitted to Chief Justice Feldman for consideration. The motion was seconded and approved. **AJC-93-29.**

ABA Crisis in Justice System Conference Report

Mike Kimerer reported on the conference held in Washington, D.C. Attendees were Chief Justice Feldman, Mike Kimerer, Jay Heiler, Representative Ernie Baird, Barry Starr, Portia Erickson, and Dave Byers. The consensus of the speakers was that the justice system is out of control, in large part due to the impact of drug laws, high costs, antiquated methods and other problems.

Arizona was held out as a model in many areas.

Attorney General Janet Reno, speaking at the conference, indicated that the prison population will have to be reduced. One way of doing this would be to provide treatment instead of incarceration, and to work with children prior to their involvement with crime.

Committee on Limited Jurisdiction Courts

Judge Daniels commended Lynn Wiletsky for her work with the committee. He also commended the rules subcommittee for doing an outstanding job. The proposed changes are to be considered by the Court in July. The subcommittee recommends that the Court not recirculate all the rules again for comment, as they have been circulated a number of times.

The ADR subcommittee's request for funding has been approved. The probation subcommittee is researching ways to fund limited jurisdiction probation services. The committee will be considering trial court performance standards at the September 22 meeting.

The use of the Zlaket Rules in limited jurisdiction courts was discussed by the committee. No one at the meeting reported any problems with implementing them. However, Judge Brown indicated that Pima County was experiencing some problems due to cost of compliance in small civil cases, and Judge Trujillo also indicated that comments had been submitted. Judge Daniels will readdress the issue and suggests that compliance by limited jurisdiction courts might be optional.

Committee on Superior Court

The committee recommends that adoption of trial court performance standards will be a goal for courts to use as a performance measurement tool. They also dislike any requirement that would increase paperwork.

The Spangenberg Report was reviewed; several items were recommended for adoption. Several recommendations have already been implemented. The formation of a statewide committee on indigent defense will need more focus. A subcommittee is working on the definition of a "criminal case."

Judge Myers requested consideration be given to formation of a statewide committee on probate and mental health programs. It was recommended that the judges consider meeting annually at the judicial conference to discuss these issues.

MOTION: A motion was made, seconded and approved that the Council recommends that probate judges and those interested in probate matters arrange with the Administrative Office of the Courts to meet at the Arizona Judicial Conference. **AJC-93-30.**

Judge Truman of Pima County has been nominated for the Treat Award. During her time on the bench, she implemented numerous procedural and substantive improvements in probate practices in Pima County.

MOTION: The Arizona Judicial Council endorses the nomination of Judge Alice Truman for the Treat Award. The motion was seconded and unanimously approved. **AJC-93-31.**

Commission on Juvenile Justice in Arizona

The administrative order establishing the commission as committee of the Arizona Judicial Council was distributed. The commission will be reporting their findings to the council at the December 6 meeting.

Proposition 109

Brian deVallance updated the council on the current status of the implementation of the proposition. One element entails the establishment of a judicial review process, the second relates to the process of selecting judges.

In Maricopa County, two representatives are to be selected from each supervisory district to serve on a nominating commission for selection of judges. To date, only one

district has forwarded their recommendations to the Governor's office. As a result, the Governor has not made any appointments. Currently, Maricopa County has three judicial vacancies. The failure to complete the process has caused the Court to receive criticism by some members of Los Abogados. It was recommended to the group that they voice their concerns to the board of supervisors. Numerous letters have been sent by the Court to the supervisors advising them of the necessity of forwarding their recommendations to the Governor.

Brian met with some members of Los Abogados who requested that the nominating commission delay forwarding the nominations to the Governor. The commission feels this would be a violation of their constitutional duties. Nominations for Division 68 have been forwarded to the Governor, however the commission agreed to delay meeting on the screening and interviewing for the Division 69 vacancy until late July or August. It is expected that should the supervisors not make their recommendations to the Governor by the time the commission meets on the Division 69 vacancy, the same situation will occur.

Justice Feldman discussed a letter received from the U.S. Department of Justice regarding the election of judges in several counties in Arizona. Negotiations are on-going with the Department of Justice to request an exception. Those judges affected should discuss this with their board of supervisors in the event a lawsuit is filed,

The Court doesn't feel it appropriate to be involved in questions of whether or not a method of electing judges is in violation of the Voting Rights Amendment.

Call to the Public

No members of the public were present.

Adjournment

The meeting adjourned at 12:00 p.m.

